



NEWS RELEASE

CALIFORNIA SECRETARY OF STATE **KEVIN SHELLEY**

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Contact: Caren Daniels-Meade
916-653-6575

Secretary of State Kevin Shelley Responds to BSA Audit

Sacramento, CA --- Secretary of State Kevin Shelley released the following statement in response to the Bureau of State Audits report released today:

This office and its professional, dedicated staff welcomed the audit by the Bureau of State Audits (BSA), and appreciate the time and effort Ms. Howle and her staff put into it. While we disagree with some of the BSA's findings, we find the document to be a resource that complements our own efforts to improve the Help America Vote Act (HAVA) program.

We do not dispute that overall, we could have done a better job. In fact, we are disappointed that our administration of HAVA may not have been consistent with our performance in other areas. Any mistakes that were made were certainly not intentional and we don't believe the audit report finds otherwise.

Few would disagree that HAVA is a massive new federal spending program with a myriad of complex and intricate mandates. Its provisions span more than 160 pages of text. It is noteworthy that this office, like most Secretaries of State nationwide, had no previous experience in administering federal funds, or even state funds, pursuant to such a complex program. We question whether other states would fare differently under the scrutiny of a similar review.

Moreover, unlike other states, this office had to administer an historic and unscheduled recall election last year, just as we were gearing up our HAVA compliance efforts. The office's administration of that election has been widely praised for its fairness and efficiency.

While this office's success in other arenas, including the November 2004 election (again widely recognized as problem free) does not excuse any shortcomings in its administration of the HAVA program, it should be noted that we had already taken steps to resolve HAVA-related issues before and during the conduct of this audit.

These steps included:

- Established a team consisting of senior staff to manage the overall HAVA program and to work with a well-respected consulting firm to help structure the effort and to ensure we are following recognized standard practices relating to this federal program;

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- Communicated, verbally and in writing, the specific roles and responsibilities of staff and the importance of adhering to appropriate activity and timesheet reporting procedures;
- Brought in an entirely new senior management team of veteran Secretary of State employees with extensive knowledge of state procedures and election requirements; and
- Cancelled all HAVA contracts in the regional offices pending further review of duties and responsibilities. We have standardized the language to be used in any future consultant contracts to include provisions regarding conflicts of interest and incompatible activities.

With this audit report in hand, we now will take even more aggressive corrective action, including the implementation of all of the audit report's recommendations.

Finally, it's important to keep in mind what we have implemented in the past two years in terms of the HAVA program itself. We have undertaken the state's first in-depth review of voting systems and required vendors and county election officials to meet enhanced security provisions to ensure that our elections remain free and accurate.

In addition:

- The office, in consultation with county elections officials, has allocated and distributed \$51.1 million to counties for replacement of punch-card voting machines. This is in addition to the approximately \$59 million that counties have already received for voting machine modernization as a result of the passage of Proposition 41.
- The office has also allocated \$9.9 million to counties for voter education and poll worker training and \$4.6 million to counties to enhance the security of electronic voting machines.
- The office has developed and implemented the nation's first "parallel monitoring" program to help ensure accuracy and security of electronic voting machines.
- Working with county elections officials, we have successfully developed and implemented a posting program to inform voters of their rights.
- The office, in consultation with county elections officials, has developed a Provisional Ballot and Free Access Program, which provides all California voters with the right to cast provisional ballots and a method to determine whether the ballots were counted.
- We revised voter registration forms to be consistent with HAVA requirements and these forms have been distributed to all 58 California counties.

- The office has developed a program for implementing HAVA's identification requirements for certain first-time voters who register to vote by mail. The office developed and implemented an interim system to verify information regarding voters who would otherwise have to present identification in order to vote.
- The office has developed and implemented an administrative complaint procedure process.

Clearly, we have made substantial progress to ensure that California benefits from all the mandates of HAVA.

We are committed to working with county election officials, the Election Assistance Commission, the Governor, the Legislature, and other organizations and individuals to make California's implementation of HAVA a model for the rest of the nation.



SECRETARY OF STATE
KEVIN SHELLEY
STATE OF CALIFORNIA

December 3, 2004

Elaine M. Howle
California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle,

Thank you for the opportunity to respond to the audit report regarding the implementation by the Office of the Secretary of State of the Help America Vote Act of 2002 (HAVA). We appreciate the Bureau of State Audit's (Bureau) report and recommendations and, in fact, discuss below our intentions to implement as soon as possible the recommendations not already implemented. At the end of this letter, we also clarify certain issues and dispel misimpressions that we believe need to be included to make this a more accurate report.

As the audit correctly indicates, this office *was* overburdened by a cyclone of unprecedented and historic forces:

- a combination of three elections -- a first-ever statewide recall election, a presidential primary, and a presidential general election;
- a nation-wide controversy over electronic voting that threatened to undermine public confidence in the equipment used to cast and count ballots; and
- the management of HAVA, a complex law with built-in ambiguities and little administrative guidance. This office historically has not administered federally funded programs.

Even with conflicting demands on our time and staff, we have been able to competently fulfill our core mission of supervising those elections during this period. In particular, this office and county elections officials received high marks for the efficient and professional manner in which the unprecedented recall election was conducted. So while we are disappointed that our administration of HAVA may not have been consistent with our performance in other areas, any mistakes that were made were certainly not intentional. We don't believe the audit report finds otherwise.

We continue to believe that the *sum total* of work performed – whether directed at increasing voting access for the disabled community, ensuring the accuracy and security of electronic voting machines, or providing voter education – can be fairly characterized as professional, solid work that the Secretary of State’s office performed in the public interest.

We are now in the process of implementing many of your recommendations, in addition to the changes we have made at our own initiative over the past several months to ensure proper management and oversight of HAVA activities.

We have recently appointed a new upper-level management team. Each member of that team has extensive experience with state systems and procedures and the ability to administer effectively the office and its programs, particularly the HAVA program.

In addition, we are in the process of contracting with a respected management consulting firm to provide oversight of HAVA implementation activities. We are confident our new team, working in collaboration with the HAVA management contractor, will improve the program’s effectiveness and productivity. We expect to award the HAVA management contract to a firm in December 2004.

With this audit report in hand, we will now take even more aggressive corrective action, including the implementation of all the audit’s recommendations, as follows:

Bureau Recommendations: Develop a comprehensive implementation plan that includes all HAVA projects and activities; and Establish timelines and key milestones and monitor to ensure that planned HAVA activities and projects are completed when scheduled and meet expectations.

- The office has drafted a preliminary implementation plan that we are in the process of finalizing.
- On December 2, 2004, the office sent to the Department of Finance (DOF) its revised HAVA spending plan to provide details of the proposed distribution of HAVA funds for 2004-05 and 2005-06. This has been an iterative process and, as the Bureau notes, two versions of the plan have previously been sent to DOF for review. We consider the ongoing discourse with DOF to be an important part of the process.

Bureau Recommendations: Designate the individuals responsible for coordinating and assuring the overall implementation of the plan; and Identify and dedicate the resources necessary to carry out the plan and assign roles and responsibilities accordingly.

- A member of our HAVA staff has been clearly identified to manage the overall effort. That individual will be supported by the management consultant firm and will join a team consisting of managers responsible for the implementation of all HAVA requirements. This individual reports directly to the Undersecretary.

Bureau Recommendation: Develop clear job descriptions for employees working on HAVA activities that include expectations regarding conflicts of interest, incompatible activities, and any other requirements important in administering federal funds.

- We have communicated, verbally and in writing, the specific roles and responsibilities of staff and the importance of adhering to appropriate activity and timesheet reporting procedures. The final duty statements for staff will include a clear statement of conflicts of interest, incompatible activities, and other requirements, including those from the Hatch Act, that are important in administering federal funds.

Bureau Recommendation: Establish and enforce a policy prohibiting partisan activities by employees and consultants hired by the office. Periodic staff training and annual certification by all employees that they have read and will abide should be part of this policy.

- We are collecting model language that we can use to develop written rules prohibiting inappropriate partisan activities of employees, consultants and contractors.
- We will establish a program of periodic staff training and annual recertification to ensure ongoing compliance.

Bureau Recommendation: Standardize the language used in all consultant contracts to include provisions regarding conflicts of interest and incompatible activities, including partisan activities.

- The office has standardized the language used in all consultant contracts to include provisions regarding conflicts of interest and incompatible activities. It is now standard procedure for the office to include such language in all contracts.

Bureau Recommendation: Ensure that time charged to HAVA or any other federal program is supported with appropriate documentation, including time sheets and certifications.

- We have obtained and are adapting for our use the time sheets and procedures that are commonly used by other state agencies that receive federal funds, such as the Department of Transportation and the Department of Social Services.

Bureau Recommendation: When competition is not used to award contracts, establish a process to screen and hire consultants.

- We are developing and documenting a process to screen and hire consultants, which we anticipate putting into practice within the next few weeks. In the interim, we will continue to award non-competitively-bid contracts only if specifically approved by the Secretary of State and the Department of General Services. We believe that even if authorized by state procurement rules, non-competitively-bid contracts should be the rare exception.

Bureau Recommendation: Follow control procedures for the review and approval of contracts that include a detailed description of the scope of work, specific deliverables, and performance measures.

- We have established a more efficient contract review process, which requires any contractor to have a detailed scope of work, specific deliverables, and performance measures. These requirements are now standard practice at the Office of the Secretary of State.

Bureau Recommendation: Require that contract managers monitor for the completion of contract deliverables prior to approving invoices for payment.

- The office has reminded its managers of the need to ensure the completion of contract deliverables prior to approving invoices for payment and is writing detailed procedures for invoice approval.

Bureau Recommendation: Review invoices to assure that charges to be paid with HAVA funds are reasonable and allowable and conform to the terms of the contract.

- We have implemented a system whereby a manager from our Management Services Division reviews contractors' deliverables and matches them against the contractors' contracts. If obligations are not met, no HAVA funds will be disbursed. The new management consultant will have a role in this oversight as well.

Bureau Recommendation: Use competitive bidding requirements to award contracts and restrict the use of exemptions from competitive bidding to those occasions that truly justify the need for an exemption.

- We will restrict the use of exemptions from competitive bidding to those occasions that truly justify the need.

Bureau Recommendations: Follow General Services' policies when using CMAS for contracting needs; and Comply with state policy for procuring commodities.

- We will comply fully with applicable state procurement policies.

Bureau Recommendation: Prohibit fiscal year 2004-05 expenditures for HAVA activities until it receives spending authority from the Department of Finance and the Legislature.

- We will make sure that 2004-2005 funds are not expended or encumbered without the appropriate spending authority.

Bureau Recommendation: Disburse HAVA funds to counties for voting machine replacement within the timeframes set out in its grant application, procedures, and contracts.

- We currently do not have spending authority to disburse these HAVA funds. When we do, we will disburse the funds expeditiously within the timeframes set out in the grant application, procedures, and contracts to eligible counties who have applied for voting machine replacement funds.

PROGRESS IMPLEMENTING HAVA

The Bureau's report provides significant detail of the HAVA program from May 2004 to October 2004. However, the Office of the Secretary of State has been working on the planning and implementation of HAVA for nearly 24 months. In that time, we have made significant progress in implementing HAVA requirements, including:

- The Secretary of State, in consultation with county elections officials, has allocated and distributed \$51.1 million to counties for replacement of punch-card voting machines. This is in addition to the approximately \$59 million that counties have already received for voting machine modernization as a result of the passage of Proposition 41. The Secretary of State has also allocated \$9.9 million to counties for voter education and poll worker training and \$4.6 million to counties to enhance the security of electronic voting machines.
- The office, in consultation with county elections officials, has developed a Provisional Ballot and Free Access Program, which provides all California voters with the right to cast provisional ballots and a method to determine whether the ballots were counted.
- The office has established an information clearinghouse for military and overseas voters.
- We revised voter registration forms to be consistent with HAVA requirements and these forms have been distributed to 58 California counties.
- The office has developed and implemented the nation's first "parallel monitoring" program to help ensure accuracy and security of electronic voting machines.
- Working with the county elections officials, we have successfully developed and implemented a posting program to inform voters of their rights.
- The office has developed a program for implementing HAVA's identification requirements for certain first-time voters who register to vote by mail. The office developed and implemented an interim system to verify information regarding voters who would otherwise have to present identification in order to vote.
- The office has developed and implemented an administrative complaint procedure.

With respect to implementing HAVA, much has been accomplished, but much remains to be done in order to meet various January 1, 2006, deadlines. We are committed to working with county elections officials, the Election Assistance Commission, the Governor, the Legislature, and other organizations and individuals to make California's implementation of HAVA a model for the nation.

We look forward to continuing the positive working relationship with the Bureau that has been established through this audit effort. We invite the Bureau to work closely with us as we strive to complete an exemplary HAVA program.

Sincerely,

KEVIN SHELLEY
Secretary of State

CATHY MITCHELL
Undersecretary of State

Clarifications

1. *The audit report states that the Secretary of State failed to provide funding or guidance to train poll workers or elections officials.*

Actually, the Secretary of State, in consultation with the President of the California Association of Clerks and Elections Officials (CACEO), developed a program to provide counties with \$9.9 million in funding for voter education and poll-worker training. The program was approved by the Legislature and the Department of Finance on September 7, 2004.

2. *The audit report states the Secretary of State could have been more proactive in assisting counties with implementing such things as provisional voting procedures and a free access system by January 1, 2004, indicating that the office did not provide guidelines until January 21, 2004.*

Actually, the Secretary of State provided written guidelines on August 12, 2003, in addition to frequent follow-up verbal advice and a memorandum on January 21, 2004, as noted later in the audit on page 3 of Table A.1.

3. *The audit report states that the Secretary of State's office appears to have split purchase orders to avoid CMAS procurement limits and competitive bidding requirements for information technology services.*

Actually, the contracts for information technology services on voting systems were to address needs from related but completely separate purposes that quickly arose from emergencies that could not have been predicted – emergencies with the potential of compromising the public's confidence in equipment used to cast and count ballots. At the time these separate contracts for information technology services relating to voting systems were initiated, our intent was only to address a series of serious problems as they emerged – and not to avoid CMAS procurement procedures.

4. *The audit report states that Renne & Holtzman Public Law Group, LLP over-charged the state pursuant to its contract.*

Actually, we believe that the audit report finding was based on contract language superseded by an amended contract designed to reflect the original intent of the contract. We do not believe that the law firm over-charged the state for the critical legal services it provided. However, if it is determined that the law firm did over-charge the state, an appropriate offset will be made with respect to amounts invoiced but not yet paid.

5. *The report suggests in many locations that this agency was not proactive in communicating with county elections officials.*

For the record:

There are nearly 25,000 precincts and 100,000 poll workers in a California election. The state's role is to provide guidance to county elections officials regarding implementation of HAVA requirements. Evidence that we took this charge seriously is demonstrated by the following:

Between January 2003 and mid-October 2004, Elections Division staff:

- **Attended at least nine HAVA-related meetings and participated in sub-committee meetings with county elections officials relating to implementation of HAVA, statewide voter registration database, provisional voting, identification requirements for first-time mail registrants, and free access to determine if one's provisional ballot was counted;**
- **Participated in discussions on HAVA implementation at the December 2002 and December 2003 annual new law workshops hosted by the California Association of County Elections Officials (CACEO);**
- **Visited three other states to study their statewide voter registration database systems;**
- **Mailed a dozen county election official memos (known as CC/ROV's) on topics related to HAVA, including collecting ID requirements, provisional ballots, HAVA's posting requirements for information at the polls, and driver's license/voter rolls interface;**
- **Conducted five public hearings throughout the state to develop, with county elections officials' input, California's *State Plan*;**
- **Adopted regulations relating to the ID requirements for specified first-time, mail-registrant voters;**
- **Created a web site with FAQ's for county elections officials and voters to use to obtain information about free access programs, ID requirements, provisional voting, military and overseas voting, and links to other resources and laws;**
- **Developed the driver's license validator system for interface with the CalVoter registration database; and**
- **Disseminated guidelines for implementing provisional voting.**

6. *The audit report states that the office spent HAVA funds on activities for which it had no spending authority.*

Actually, the office had no intention of avoiding any obligation to obtain spending authority from the Department of Finance and the Legislature before expending HAVA funds. The Budget Act of 2004 appropriates \$1.7 million to the Secretary of State's office from the Federal Trust Fund for "operational costs" associated with implementation of HAVA. Based on this language, and discussions which occurred when the language was inserted

into the Budget Act of 2004, the office believed “operational costs” to include any activity authorized by HAVA and contracted accordingly, but recognized that there was an aggregate cap of \$1.7 million for 2004-05. If it is determined that “operational costs” should be more narrowly construed to mean “administrative costs,” the office will do so.